

**Mar 03, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SAMANTHA M.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,

Defendant.

No. 4:21-cv-5123-EFS

**ORDER GRANTING PLAINTIFF'S  
SUMMARY-JUDGMENT MOTION,  
DENYING DEFENDANT'S  
SUMMARY-JUDGMENT MOTION,  
AND REMANDING FOR FURTHER  
PROCEEDINGS**

Plaintiff Samantha M. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because the ALJ failed to adequately develop the record regarding Plaintiff's claimed mental impairments, the Court reverses the ALJ's decision and remands this matter for further proceedings.

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<sup>1</sup> For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

## I. Five-Step Disability Determination

A five-step evaluation determines whether a claimant is disabled.<sup>2</sup> Step one assesses whether the claimant is engaged in substantial gainful activity.<sup>3</sup> Step two assesses whether the claimant has a medically severe impairment or combination of impairments that significantly limit the claimant's physical or mental ability to do basic work activities.<sup>4</sup> Step three compares the claimant's impairment or combination of impairments to several recognized by the Commissioner to be so severe as to preclude substantial gainful activity.<sup>5</sup> Step four assesses whether an impairment prevents the claimant from performing work she performed in the past by determining the claimant's residual functional capacity (RFC).<sup>6</sup> Step five assesses whether the claimant can perform other substantial gainful work—work that exists in significant numbers in the national economy—considering the claimant's RFC, age, education, and work experience.<sup>7</sup>

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<sup>2</sup> 20 C.F.R. §§ 404.1520(a), 416.920(a).

<sup>3</sup> *Id.* §§ 404.1520(a)(4)(i), (b), 416.920(a)(4)(i), (b).

<sup>4</sup> *Id.* §§ 404.1520(a)(4)(ii), (c), 416.920(a)(4)(ii), (c).

<sup>5</sup> *Id.* §§ 404.1520(a)(4)(iii), (d), 416.920(a)(4)(iii), (d).

<sup>6</sup> *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

<sup>7</sup> *Id.* §§ 404.1520(a)(4)(v), (g), 416.920(a)(4)(v), (g).

## II. Background

In May 2019, Plaintiff filed an application for benefits under Title 16, claiming disability based on attention-deficit/hyperactivity disorder (ADHD), depression, anxiety, shrapnel in her right knee, and foot pain.<sup>8</sup> Plaintiff alleged an onset date of September 29, 2018.<sup>9</sup> After the agency denied her applications initially and on reconsideration,<sup>10</sup> Plaintiff requested a hearing before an ALJ.

In October 2020, ALJ Donna Walker held a telephonic hearing through which she heard testimony from medical expert Jay Toews, EdD, Plaintiff, and a vocational expert.<sup>11</sup> In November 2020, the ALJ issued a written decision denying disability.<sup>12</sup>

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<sup>8</sup> AR 191, 223.

<sup>9</sup> AR 191.

<sup>10</sup> AR 73–83 (initial denial); AR 84–98 (denial on reconsideration). Although the record contains references regarding Plaintiff transitioning from female to male, Plaintiff consistently uses female pronouns in her briefing. *See generally* ECF Nos. 14, 20. Based on Plaintiff's apparent pronoun preference—and for the sake of consistency and clarity—the Court uses only female pronouns to refer to Plaintiff. Any misgendering is inadvertent; no disrespect is intended.

<sup>11</sup> AR 38–71.

<sup>12</sup> AR 15–26.

1 As to the sequential disability analysis, the ALJ found:

- 2 • Step one: Plaintiff had not engaged in substantial gainful activity since  
3 March 1, 2019, the application date.
- 4 • Step two: Plaintiff had the following medically determinable severe  
5 impairments: adjustment disorder, with anxiety, and personality  
6 disorder, unspecified.
- 7 • Step three: Plaintiff did not have an impairment or combination of  
8 impairments that met or medically equaled the severity of one of the  
9 listed impairments.
- 10 • RFC: Plaintiff had the RFC to perform work at all exertional levels but  
11 limited to work that is:
- 12 ○ simple, routine, and predictable;
- 13 ○ commensurate an SVP rating of 2;
- 14 ○ free from production quotas,
- 15 ○ possibly in proximity to, but not requiring close cooperation with, co-  
16 workers and supervisors; and
- 17 ○ away from the general public.<sup>13</sup>
- 18 • Step four: Plaintiff had no past relevant work.

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23 <sup>13</sup> See AR 20.

- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as assembler, small parts; laundry worker I; and laborer, stores.<sup>14</sup>

In reaching her decision, the ALJ found Dr. Toews' testimony persuasive and relied on it heavily in assessing Plaintiff's mental impairments and related testimony.<sup>15</sup> The ALJ found Plaintiff's medically determinable impairments could reasonably be expected to cause some of the alleged symptoms, but her statements concerning the intensity, persistence, and limiting effects of those symptoms were "not entirely consistent with the medical evidence and other evidence in the record."<sup>16</sup>

Plaintiff requested review of the ALJ's decision by the Appeals Council, which denied review.<sup>17</sup> Plaintiff then appealed to this Court.

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<sup>14</sup> AR 25.

<sup>15</sup> See AR 21–24.

<sup>16</sup> AR 21.

<sup>17</sup> AR 1–6.

### III. Standard of Review

A district court's review of the Commissioner's final decision is limited.<sup>18</sup> The Commissioner's decision is set aside "only if it is not supported by substantial evidence or is based on legal error."<sup>19</sup> Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>20</sup> Because it is the role of the ALJ to weight conflicting evidence, the Court upholds the ALJ's findings "if they are supported by inferences reasonably drawn from the record."<sup>21</sup> Further, the Court may not reverse an ALJ decision due to a harmless error—one that "is inconsequential to the ultimate nondisability determination."<sup>22</sup>

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<sup>18</sup> 42 U.S.C. § 405(g).

<sup>19</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

<sup>20</sup> *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

<sup>21</sup> *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). *See also Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.) (cleaned up).

<sup>22</sup> *Molina*, 674 F.3d at 1115 (cleaned up).

#### IV. Analysis

Plaintiff argues the ALJ erred by (1) failing to develop the record regarding Plaintiff's diagnosis of autism, (2) improperly discounting Plaintiff's symptom reports, and (3) failing to fully consider the impact of Plaintiff's personality disorder when analyzing the evidence of record.<sup>23</sup> For the reasons that follow, the Court agrees that the ALJ failed to adequately develop the record regarding Plaintiff's claimed (and seemingly diagnosed) impairment of autism. And, because that error requires reversal for additional proceedings and a new sequential evaluation, the Court does not reach Plaintiff's other assignments of error.

##### A. Development of the Record: Plaintiff shows reversible error.

Plaintiff first argues that the ALJ failed to adequately develop the record regarding Plaintiff's claimed impairment of autism.<sup>24</sup> Plaintiff contends that the ALJ should have inquired further regarding autism in light of Plaintiff's pre-hearing brief (in which she asserted autism spectrum disorder as a severe impairment),<sup>25</sup> her testimony regarding autism being the biggest obstacle to employment, her self-reports of being diagnosed with autism as a child, and psychological reports which included autism as a possible diagnosis.

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<sup>23</sup> See ECF No. 14 at 2.

<sup>24</sup> ECF No. 14 at 5–8.

<sup>25</sup> See AR 294–95.

1           **1.     An ALJ's Duty to Develop the Record**

2           Although a claimant carries the burden of proving disability in Social  
3 Security cases,<sup>26</sup> the ALJ nonetheless “has a special duty to fully and fairly develop  
4 the record and to assure that the claimant’s interests are considered.”<sup>27</sup> To begin  
5 with, unless the alleged onset date is less than 12 months before the claimant filed  
6 her application, the ALJ in every case is required to develop the claimant’s  
7 “complete medical history” for “at least” the 12 months preceding the month of  
8 filing.<sup>28</sup> But the ALJ may need to develop the claimant’s medical history even  
9 further back if “there is a reason to believe that development of an earlier period is  
10 necessary.”<sup>29</sup> Similarly, the circumstances of a given case may require additional  
11 development of the evidence relating to a particular issue. “The ALJ’s duty to  
12 supplement a claimant’s record is triggered by ambiguous evidence, the ALJ’s own  
13 finding that the record is inadequate[,] or the ALJ’s reliance on an expert’s  
14 conclusion that the evidence is ambiguous.”<sup>30</sup>

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17 <sup>26</sup> 42 U.S.C. § 423(d)(5)(A); 20 C.F.R. § 416.912(a).

18 <sup>27</sup> *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996) (quoting *Brown v. Heckler*,  
19 713 F.2d 441, 443 (9th Cir. 1983)).

20 <sup>28</sup> 20 C.F.R. § 416.912(b)(1).

21 <sup>29</sup> *Id.*

22 <sup>30</sup> *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005). *See also Mayes v.*  
23 *Massanari*, 276 F.3d 453, 459–60 (9th Cir. 2001) (“An ALJ’s duty to develop the



1           **2. Dr. Marks' Psychological Evaluations of Plaintiff**

2           As Plaintiff points out, the first discussion of autism in the current record  
3 was by psychologist N.K. Marks, PhD, in December 2016, when she included it as a  
4 rule-out diagnosis.<sup>31</sup> It was in December 2016 that Dr. Marks performed her first  
5 psychological evaluation of Plaintiff, which included a clinical interview but lacked  
6 any records to review.<sup>32</sup> Dr. Marks expressly labeled autism as a rule-out  
7 diagnosis,<sup>33</sup> explaining in her report, “[Plaintiff] has some avoidance features and  
8 possible cluster B characteristics.<sup>34</sup> She may have some autistic tendencies,  
9 however, in her inability to read people clearly. More data would be needed to

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13 record further is triggered only when there is ambiguous evidence or when the  
14 record is inadequate to allow for proper evaluation of the evidence.”).

15 <sup>31</sup> ECF No. 14 at 6 (citing AR 813).

16 <sup>32</sup> AR 810–16.

17 <sup>33</sup> AR 813 (“R/O Autism Spectrum, Level 1”).

18 <sup>34</sup> AR 812. According to the Mayo Clinic, “Cluster B personality disorders are  
19 characterized by dramatic, overly emotional[,] or unpredictable thinking or  
20 behavior. They include antisocial personality disorder, borderline personality  
21 disorder, histrionic personality disorder and narcissistic personality disorder.” *See*  
22 [https://www.mayoclinic.org/diseases-conditions/personality-disorders/symptoms-](https://www.mayoclinic.org/diseases-conditions/personality-disorders/symptoms-causes/syc-20354463)  
23 [causes/syc-20354463](https://www.mayoclinic.org/diseases-conditions/personality-disorders/symptoms-causes/syc-20354463) (accessed Feb. 24, 2023).

1 diagnose.”<sup>35</sup> Dr. Marks further explained, “[Plaintiff] presents with a myriad of  
2 symptoms and observations over time will help clarify diagnosis.”<sup>36</sup> Dr. Colby, a  
3 state-agency psychologist, reviewed and agreed with Dr. Marks’ December 2016  
4 report, including the rule-out diagnosis of autism spectrum disorder.<sup>37</sup>

5 In December 2017, Dr. Marks evaluated Plaintiff a second time, with  
6 Plaintiff endorsing the same symptoms as the year before.<sup>38</sup> Plaintiff further  
7 reported that she was diagnosed with autism in school, but that when she  
8 transferred schools, her new school “did not carry that diagnosis through.”<sup>39</sup>  
9 Dr. Marks noted under the treatment-history portion of her report that “[Plaintiff]  
10 still has many problems dealing with others, considerable anxiety[,] and has little  
11 idea of what is expected of her.”<sup>40</sup> Then, in her clinical findings regarding autism,  
12 Dr. Marks noted, “*Records pending.* [Plaintiff] presents with social[ly] awkward  
13 behavior, poor social understanding, limited insight, immaturity, significant social  
14 anxiety. She is somewhat literal, has constricted affect, little sense of humor,  
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18 <sup>35</sup> AR 812.

19 <sup>36</sup> AR 814.

20 <sup>37</sup> AR 808–09.

21 <sup>38</sup> AR 817–22.

22 <sup>39</sup> AR 818.

23 <sup>40</sup> AR 818.

1 avoids others. She reports that she was in life skills due to her poor social skills  
2 and academics, diagnosed with autism in [grade school].”<sup>41</sup>

3 Under diagnoses, Dr. Marks no longer attached the “rule-out” qualifier to  
4 the autism diagnosis; nor did she otherwise expressly label it as a “provisional” or  
5 “differential” diagnosis. Rather, Dr. Marks wrote, “Autism spectrum disorder—  
6 *further assessment is planned*.”<sup>42</sup> And, under the prognosis/plan portion of her  
7 report, Dr. Marks explained, “*Records have been requested* from her past schools  
8 regarding autism diagnosis. She presents as socially awkward today, somewhat  
9 literal, reports high levels of social anxiety and poor social understanding. *A full*  
10 *assessment is recommended* to determine cognitive levels, document autism  
11 symptoms.”<sup>43</sup>

12 The record lacks any indication as to whether the “full assessment”  
13 recommended by Dr. Marks ever took place or, if so, what the assessment says  
14 regarding Plaintiff’s claim of autism as a medically determinable impairment. The  
15 same is true regarding the school records that Dr. Marks requested. However,  
16 when state-agency consulting psychologist Luci Carstens, PhD, PS, reviewed  
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19 <sup>41</sup> AR 819 (emphasis added). *See also* AR 818 (noting Plaintiff presented “as very  
20 literal, no sense of humor”).

21 <sup>42</sup> AR 819 (emphasis added). Dr. Marks also included other diagnoses that are not  
22 relevant for purposes of the Court’s decision.

23 <sup>43</sup> AR 820–21 (emphasis added).

1 Dr. Marks' December 2017 report, Dr. Carstens opined that the diagnosis of "an  
2 autism spectrum disorder" was supported by available objective medical evidence.<sup>44</sup>  
3 Dr. Carstens did not appear to treat the autism diagnosis as still being limited to a  
4 rule-out diagnosis.

5 **3. Dr. Toews' Testimony**

6 At the hearing, Dr. Toews—on whom the ALJ relied extensively throughout  
7 her decision—testified first. Dr. Toews said that based on his review of the records,  
8 Plaintiff's psychological issues appeared to be mostly "adjustment related  
9 problems," and Dr. Toews opined that "the most correct diagnosis would be an  
10 adjustment disorder with anxiety."<sup>45</sup>

11 Notably, in reviewing the medical evidence, Dr. Toews credited Dr. Marks as  
12 giving one of the two best psychological evaluations in the record.<sup>46</sup> And Dr. Toews  
13 commented only briefly on the subject of autism. Dr. Toews observed, "Dr. Mark[s]  
14 felt [Plaintiff] had avoidant personality features and raised a question as to  
15 whether or not there might be some kind of signs of autism and some kind of signs  
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20 <sup>44</sup> See AR 823. Dr. Carstens also explained that Dr. Colby's December 2016 review  
21 of medical evidence similarly reflected such a diagnosis. See AR 823.

22 <sup>45</sup> AR 46.

23 <sup>46</sup> AR 46–47.

1 of ADHD.”<sup>47</sup> But Dr. Toews gave no additional information or analysis regarding  
2 autism or ADHD and simply noted, “Those were not confirmed. There was no  
3 further testing.”<sup>48</sup>

4 The ALJ did not inquire further with Dr. Toews regarding autism, its signs  
5 and symptomology, or whether a confirmed diagnosis would alter his analysis of  
6 the available evidence. According to the Listings, the signs and symptoms of  
7 autism spectrum disorder can include “behavioral difficulties, including  
8 hyperactivity, short attention span, impulsivity, aggressiveness, or self-injurious  
9 actions.”<sup>49</sup> And much of the record reflects Plaintiff exhibiting behavior that—at  
10 least arguably—matches those symptoms.<sup>50</sup> Lacking any discussion by Dr. Toews,

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14 <sup>47</sup> AR 47. *See also* AR 49 (regarding the Listing for autism spectrum disorder,  
15 Dr. Toews saying, “I think . . . there is insufficient evidence. There was no follow  
16 up to the diagnosis under that category.”).

17 <sup>48</sup> AR 47. *See also* AR 49 (regarding the Listing for autism spectrum disorder,  
18 Dr. Toews saying, “I think . . . there is insufficient evidence. There was no follow  
19 up to the diagnosis under that category.”).

20 <sup>49</sup> Listing 12.00(B)(8), 20 C.F.R. § Pt. 404, Subpt. P, App. 1.

21 <sup>50</sup> *See, e.g.*, AR 377–402 (inpatient treatment for suicidal ideation); AR 497 (noting  
22 “reckless behavior of writing on her doors”); AR 596 (Plaintiff reporting poor  
23 concentration and increased anger and irritability, stating that “any little thing”

1 or any other evidence to inform the issue, it is unclear whether a confirmed  
 2 diagnosis of autism would have altered any of Dr. Toews' opinions, particularly his  
 3 opinion that much of Plaintiff's problems were "due to motivation and  
 4 noncompliance, not any mental illness," and that she "would be highly responsive  
 5 to a behavior modification program."<sup>51</sup>

#### 6 **4. Plaintiff's Testimony**

7 After Dr. Toews concluded and hung up, Plaintiff presented testimony. The  
 8 ALJ started by asking Plaintiff for her name, date of birth, education, and recent  
 9 work history. Plaintiff's counsel then proceeded to ask Plaintiff about her claimed  
 10 impairments.<sup>52</sup> Although Plaintiff also described suffering from social anxiety,  
 11 depression, and ADHD, she testified that autism was "the main reason" why she  
 12 could not work.<sup>53</sup> Plaintiff did not elaborate on her autism symptoms or how  
 13 autism specifically limited her ability to work. Yet, the ALJ never asked Plaintiff  
 14 any clarifying questions about autism or why she believed it to be her most  
 15 significant impairment. Indeed, after asking the basic introductory questions, the  
 16 ALJ did not ask Plaintiff any follow-up questions at all.

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 19 will cause her to "lose [her] cool" and she will scream at others.); AR 860 ("Sores on  
 20 arms from picking at skin.").

21 <sup>51</sup> AR 50, 54.

22 <sup>52</sup> AR 57–64.

23 <sup>53</sup> AR 59–61.



1 evaluations, Dr. Carstens' reviewing opinion, Plaintiff's pretrial briefing, and  
 2 Plaintiff's hearing testimony, the ALJ should have been alerted to the need to  
 3 inquire further before rejecting autism as a medically determinable impairment.<sup>55</sup>  
 4 After all, "it is incumbent upon the ALJ to scrupulously and conscientiously probe  
 5 into, inquire of, and explore for all the relevant facts. [S]he must be especially  
 6 diligent in ensuring that favorable as well as unfavorable facts and circumstances  
 7 are elicited."<sup>56</sup>

## 8 **6. Reversible Error**

9 Due to a noted lack of medical evidence, the current record remains  
 10 ambiguous as to whether Plaintiff has autism.<sup>57</sup> The ALJ therefore erred by failing  
 11 to adequately develop Plaintiff's "complete medical history, including arranging for  
 12 a consultative examination(s) if necessary, and making every reasonable effort to  
 13 help [her] get medical reports from [her] own medical sources," before determining  
 14 that she was not disabled.<sup>58</sup>

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 17 <sup>55</sup> See *Webb*, 433 F.3d at 687; *Mayes*, 276 F.3d at 459–60.

18 <sup>56</sup> *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003) (quoting *Higbee v. Sullivan*,  
 19 975 F.2d 558, 561 (9th Cir. 1992)).

20 <sup>57</sup> See *Webb*, 433 F.3d at 687 ("[A]n ALJ may find that a claimant lacks a medically  
 21 severe impairment or combination of impairments only when h[er] conclusion is  
 22 'clearly established by medical evidence.'" (quoting SSR 85-28)).

23 <sup>58</sup> 20 C.F.R. § 416.945(a)(3).



1 Errors by an ALJ at step two of the evaluation process are frequently  
2 deemed inconsequential—the idea being that such error “could only have  
3 prejudiced [the claimant] in step three (listing impairment determination) or step  
4 five (RFC) because the other steps, including this one, were resolved in her  
5 favor.”<sup>59</sup> Here, however, neither the ALJ’s decision nor the overall record provide a  
6 basis for the Court to assess whether, or to what extent, an accurate autism  
7 diagnosis might have altered the rest of the sequential evaluation process,  
8 including steps three and five. The Court therefore “cannot conclude that the  
9 ALJ’s decision was based on substantial evidence that took the totality of  
10 [Plaintiff]’s medical condition[s] into account.”<sup>60</sup> The ALJ’s error was consequential  
11 and warrants reversal.<sup>61</sup>

12 **B. Remand: Further proceedings are required.**

13 The record does not clearly establish that Plaintiff is disabled, and remand  
14 for further proceedings is necessary to further develop the record and to resolve  
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21 <sup>59</sup> See *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005).

22 <sup>60</sup> *Celaya*, 332 F.3d at 1184.

23 <sup>61</sup> See *Molina*, 674 F.3d at 1115.

1 outstanding questions of fact.<sup>62</sup> Because the new evidence will likely inform nearly  
2 every aspect of the ALJ's analysis, a new sequential evaluation is necessary.

3 On remand, the ALJ shall further develop the record regarding Plaintiff's  
4 claimed mental impairments—particularly autism spectrum disorder and ADHD—  
5 and then conduct the disability evaluation anew, beginning at step two and subject  
6 to the following directions.

- 7 1. The ALJ shall inquire further with Plaintiff regarding her claimed mental  
8 impairments, including the related symptoms, behaviors, and/or other  
9 limitations.
- 10 2. The ALJ is encouraged to make reasonable efforts to obtain Plaintiff's  
11 school records as well as any other records the ALJ believes may inform  
12 the analysis regarding Plaintiff's claimed mental impairments, particularly  
13 autism.
- 14 3. Unless further development of the record otherwise reveals a psychological  
15 evaluation that is adequately on point, supported, explained, and recent,  
16 the ALJ shall order a psychological evaluation of Plaintiff that specifically  
17 addresses autism spectrum disorder and ADHD as potential diagnoses.

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21 <sup>62</sup> See *Leon v. Berryhill*, 800 F.3d 1041, 1045 (9th Cir. 2017); *Garrison v. Colvin*,  
22 759 F.3d 995, 1020 (9th Cir. 2014). See also ECF No. 14 at 17 (seeking remand for  
23 further development of the record).

1       4. Unless it is clear after further development that the evidence does not  
2       support autism as a medically determinable impairment, the ALJ shall  
3       obtain additional medical-expert evidence from a psychologist regarding  
4       the signs and symptoms of autism and explaining what, if any, behaviors  
5       exhibited by Plaintiff throughout the record could reasonably be attributed  
6       to autism. At the ALJ's discretion, the ALJ may direct that these issues be  
7       expressly addressed as part of the above psychological evaluation, or the  
8       ALJ may consult a different psychologist to elicit such evidence.

9       5. If the ALJ again discounts Plaintiff's symptom reports, the ALJ must  
10      articulate specific, clear, and convincing reasons for doing so.<sup>63</sup> General  
11      findings are insufficient because the Court cannot affirm discounting  
12      Plaintiff's symptoms for a reason not articulated by the ALJ.<sup>64</sup> The ALJ  
13      must identify what symptoms are being discounted and what evidence  
14      undermines these symptoms.<sup>65</sup> Additionally, when providing reasons for  
15      rejecting Plaintiff's symptom reports, the ALJ should be mindful of the  
16      following:

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19      <sup>63</sup> *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504  
20      F.3d at 1036).

21      <sup>64</sup> *See Garrison*, 759 F.3d at 1010.

22      <sup>65</sup> *Ghanim*, 763 F.3d at 1163 (requiring the ALJ to sufficiently explain why he  
23      discounted claimant's symptom claims)).

- 1 a. “[I]t is a questionable practice to chastise one with a mental  
2 impairment for the exercise of poor judgment in seeking  
3 rehabilitation.”<sup>66</sup> Absent additional explanation and/or evidence, a  
4 simple failure by the claimant to consistently take prescribed mental-  
5 health medications is unlikely to constitute a clear and convincing  
6 reason for discounting a claimant’s mental-health symptom  
7 testimony, especially if such noncompliance or lack of treatment may  
8 be attributed to the claimant’s mental impairments and/or a lack of  
9 access to the treatment in question.<sup>67</sup>
- 10 b. Absent an explanation as to how a claimant’s reported activities  
11 directly contradict specifically identified symptom testimony, an ALJ  
12 may reject such symptom testimony only upon making “specific  
13 findings relating to the daily activities and their transferability” to a  
14 work setting.<sup>68</sup>
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17 <sup>66</sup> *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1209–1300 (9th Cir.  
18 1999).

19 <sup>67</sup> *See Garrison*, 759 F.3d at 1018 n.24 (Symptom testimony cannot be rejected for  
20 lack of treatment if “the record affords compelling reason to view such departures  
21 from prescribed treatment as part of claimants’ underlying mental afflictions.”).

22 <sup>68</sup> *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); *See also Vertigan v. Halter*,  
23 260 F.3d 1044, 1050 (9th Cir. 2001) (The Ninth Circuit has “repeatedly asserted

- 1 c. For evidence of successful treatment/improvement to provide a valid  
2 basis for rejecting a claimant's mental-health symptom reports, the  
3 record must demonstrate that (1) the relief is lasting, and (2) the type  
4 and degree of relief are such that it is truly at odds with the symptom  
5 reports being rejected.<sup>69</sup>

6 **V. Conclusion**

7 Plaintiff establishes the ALJ erred. The ALJ is to develop the record and  
8 reevaluate—with meaningful articulation and evidentiary support—the sequential  
9 process as set forth above.

10 Accordingly, **IT IS HEREBY ORDERED:**

- 11 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is  
12 **GRANTED.**  
13 2. The Commissioner's Motion for Summary Judgment, **ECF No. 19**, is  
14 **DENIED.**  
15 3. The Clerk's Office shall enter **JUDGMENT** in favor of **Plaintiff**.

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19 that the mere fact that a plaintiff has carried on certain daily activities, such as  
20 grocery shopping, driving a car, or limited walking for exercise, does not in any way  
21 detract from her credibility as to her overall disability.”).

22 <sup>69</sup> See *Garrison*, 759 F.3d at 1017–18; see also *Reddick v. Chater*, 157 F.3d 715, 723  
23 (9th Cir. 1998)).

4. The decision of the ALJ is **REVERSED** and this matter is **REMANDED** to the Commissioner of Social Security for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

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5. The case shall be **CLOSED**.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and provide copies to all counsel.

DATED this 3rd day of March 2023.

Edward F. Shea

EDWARD F. SHEA  
Senior United States District Judge